

Richard French

AN
EXAMINATION

from the Author
PRECEDENTS

OR
PRINCIPLES

FROM WHICH IT CLEARLY APPEARS

That an IMPEACHMENT is determined
by a DISSOLUTION of PARLIAMENT.

WITH AN

A P P E N D I X,

In which all the PRECEDENTS are collected.

By J. HARRISTER.

L O N D O N :

PRINTED FOR J. DEIGHTON, 15, ST. JOHN'S HOLEDOOR.

M.DCCC.XX.

1609/ 5199



AN
EXAMINATION
OF
PRECEDENTS, &c.

AN important Constitutional Question at present engages the attention and expectation of the Public, in which the interests of an Individual, and the privileges of both Houses of Parliament, are materially concerned; viz. Whether an Impeachment abates, and is determined, by a dissolution of the Parliament in which it was commenced; or, whether the proceedings in the House of Lords remain so unaltered and undisturbed, that the Trial can be continued after the dissolution, just as it could have been after an adjournment or prorogation in the last Parliament. This is a point which, solely

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for his own information, and the gratification of his curiosity, the author of this Examination was induced to investigate; and the result of his researches, he conceives, will not be unuseful or uninstruc-
tive to his Profession, or to the Public.

Though the answer which his inquiry would oblige him to give to this interesting question, may, perhaps, to some, appear favourable to the wishes of that Gentleman who has been charged by the Commons of Great-Britain with high crimes and misdemeanors; yet he protests, that he is neither his advocate nor his agent; that he never saw his person but at the bar of the Court in Westminster-Hall; and that he has been so incurious to the circumstances of the Trial, that his mind has not the least bias or inclination to pronounce either guilty or not guilty upon his honour. But, even if the defendant were guilty of the charges exhibited against him, in the fullest extent, no one, who has a due regard

regard and proper veneration for the English Constitution, would wish to see the two Houses of Parliament transgress the bounds of their jurisdiction prescribed by the Law, in order to inflict a punishment commensurate to his crimes. The first object of the laws, is the protection of the innocent; and the best way to secure this, is by the punishment of the guilty.

For this end, judicatures have been established, and magistrates appointed; but where these magistrates disregard the authority delegated to them, such confusion must be the consequence, that the innocent will suffer, and the guilty escape with impunity.

It is the transcendent excellence of the British Government, that the whole is comprehended and embraced by the Law. Those blessings of liberty which we enjoy, we owe to that Law, which accurately defines the prerogatives of the King, and the extent of the privileges of the two

Houses of Parliament, and the power and authority of every subordinate magistrate in the kingdom.

These prerogatives, privileges, and powers, constitute no inconsiderable portion of the Rights of Englishmen: from a due exercise of these, the security and tranquillity of the whole are produced: and though cases of great delinquency may perhaps sometimes exist, which the arm of the Law cannot reach, which it can neither punish nor prevent; yet I should say, in the strong and sensible language of Sir Martin Wright, “* That these
 “ are particular and single inconveniences;
 “ and the policy of the Law of England,
 “ and indeed the true principles of all
 “ government, will rather suffer many
 “ private inconveniences than introduce
 “ one public mischief.”

Since the commencement of the present Impeachment, a monstrous doctrine has been

* Foster, 29.

been urged, which, if established, would arm the House of Lords with a despotic power, which might eventually prove fatal to our liberty and constitution; which is, that they are not bound, like inferior courts, by the rigid and inflexible rules of evidence, but that they might admit, at their discretion, any species of information which they might think necessary for the investigation of truth.

But I trust that the Lords will always have wisdom and virtue to reject such pernicious propositions, and will remember that, in their character of judges, it is their province *jus dicere*, and not *jus dare*.

The rules of evidence, like the rules of morality, are presumed to be founded in the best sense possible, in reason and wisdom matured and confirmed by the experience of ages; and, in all criminal proceedings, both in the highest and lowest courts, whether at the Quarter-sessions, or in the High Court of Parliament,
and

and in the Court of the Lord High Steward, are and ought to be precisely the same.

And my Lord Coke solemnly cautions Parliaments “* to leave all causes to be
“ measured by the golden and straight
“ metwand of the Law, and not by the
“ uncertain and crooked cord of discre-
“ tion.”

But though each of the two Houses of Parliament may do many acts, from which there is no remedy or appeal, yet I trust that they will always have such a conscientious regard to the extent of their privileges and jurisdiction, that they will never adopt the maxim, That they can do no wrong,—because they can do wrong with impunity.

Indeed, ever since the Revolution, the two Houses of Parliament have been scrupulously anxious to keep within the limits of

* 4 Inst. 41.

of their authority; and if we did not perceive this solicitude in the two Houses, "to measure their conduct by the golden metwand of the Law," the people of England would have much more to apprehend from the improper exercise of the privilege of Parliament, than of the prerogative of the Crown.

We hear much of the *Lex et Consuetudo Parliamenti*; and it has always been represented as a mystery beyond the comprehension of vulgar, uninitiated minds; that it is "** ab omnibus quærenda, à multis ignorata, à paucis cognita*;" and that there is a "*†* particular cunning in it, which even our Judges are unacquainted with." But, as the judicature of the House of Lords is always open, and as all the proceedings which are in existence, of both Houses, have been published, I have never been able to see any reason why the Law of Parliament should be more unintelligible than the *Lex Corona*,

* 1 Inst. 11 b.

† Mr. J. Powell, 2. Lord Raymond, 944.

ronæ, which has been so freely and amply discussed, or more inexplicable than the proceedings of the inferior courts; as, for instance, of the Common-Pleas, upon fines and recoveries. The usage and custom of Parliament constitutes the Law of Parliament, which is part of the common law of the land, or part of the *Lex et Consuetudo Angliæ*.

Many of the proceedings of Parliament have been introduced by modern statutes, as by Grenville's act, the Septennial act, &c. and where they depend only upon usage, this usage, like all the common law, may be presumed to have had as valid and as respectable an origin.

But this *Lex et Consuetudo Parliamenti* is best understood, as my Lord Coke declares, “* by reading the Judgments and
“ Records of Parliament at large, and the
“ Journals of the House of Lords, and
“ the Book of the Clerk of the House of
“ Commons.”

In

* 4 Inst. 23.

In addition to the orders and precedents which may be found there, conclusions, in doubtful cases, may be drawn from principles; viz. by considering the nature of the original constitution of Parliaments, their history and progress, their relation and analogy to other parts of the Law, and the convenience and inconvenience of the different determinations proposed; for, as all Law must be supposed to have general convenience for its object, where there is no other consideration to guide the judgment, that determination must be presumed to be the best law, which is the most convenient.

Upon this Question respecting the Impeachment, both Precedents and Principles compel me to conclude that the Impeachment is determined by the dissolution.

It is not now a question of the first impression; but it has been frequently agitated, upon the most solemn occasions, in the two Houses of Parliament.

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No less than four Committees in the House of Lords have been appointed within the space of forty years, to search for precedents upon this subject. These Committees made their inquiries in times of such anxiety and expectation, and have given such proofs of their attention and industry, that it is in vain to expect that any important discovery can be made in addition to the precedents which they have collected.

But I shall here briefly state, in chronological arrangement, the substance of these * Orders and Precedents; and shall afterwards make some observations upon each of them.

† 11 *March*, 1672.—It was referred, by the House of Lords, to a Committee,

* Vide these Precedents at length, in the Appendix.

† *Nota*.—At that time the legal year begun on the 25th of March; so that when December and March, &c. are mentioned of the same year, December will precede March.

mittee, to consider whether writs of error and appeals continued in *statu quo* unto the next session of Parliament.

29 March, 1673.—The Lords Committees produce several precedents from the time of Edward I, and report that businesses depending in one Parliament, or Session of Parliament, have been continued to the next Session of the same Parliament, and the proceedings thereupon have remained in the same state in which they were left, when last in agitation.

11 March, 1678.—It is referred to the Lords Committees, whether appeals can be proceeded upon after the dissolution.

17 March, 1678.—It is referred to the Committee to consider appeals as in the preceding Order; as also to
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consider the state of Impeachments brought up last Parliament (a dissolution having intervened).

19 *March*, 1678.—The Lords Committees report that appeals and writs of error continue in *statu quo*, and that the dissolution does not alter the state of the Impeachments.

22 *May*, 1785.—It was resolved, that the preceding Order, of the 19 *March*, 1678, should be reversed and annulled as to Impeachments.

5 *April*, 1690.—An Order was made to take into consideration, whether Impeachments continue from Parliament to Parliament.

7 *July*, 1690.—The Parliament prorogued, and no report made.

2 *October*, 1690.—The Parliament met after prorogation.

6 *October*,

6 October, 1690.—A Committee was appointed to inspect and consider precedents whether Impeachments continue in *statu quo* from Parliament to Parliament.

30 October, 1690.—The Committee report various precedents (vide the Appendix); upon consideration of which, and former Orders, the House of Lords discharged Lord Peterborough and Lord Salisbury, who had been impeached before the dissolution, from their bail.

22 May, 1717.—It was ordered, that all the Lords should be a Committee to search for and report such precedents as relate to the continuance of Impeachments from Session to Session, or from Parliament to Parliament.

25 May, 1717.—The Lords Committees make a very full report of precedents,

dents, from the year 1666; which being read, it was proposed to resolve, That the Impeachment of the Commons, against the Earl of Oxford, is determined by the intervening *prorogation*.

It was resolved in the negative.

So here are the Reports of four Committees in the House of Lords, besides the important vote of that House, on the 22d of May, 1785, when no Committee had been previously appointed; and it appears that for forty years this Question must have seriously engaged the attention of that House; and if a material case, upon the subject, could have been discovered by any of the Lords, it would certainly have been considered a valuable prize.

The instructions to the first Committee, on the 11th of *March*, 1672, relate only to appeals and writs of error. Upon what occasion this Committee was appointed, I have not been able to learn.

But

But, in the Report, the Lords Committees state various precedents from the time of Edward I: from which it appears, that they had not confined their inquiries to appeals and writs of error, but had extended them to every species of judicial proceeding before Parliament; for they cite two instances of criminal proceedings, which are the most important cases upon this Question of Impeachment, which have been produced from ancient times, viz.

15 Edw. III.—The case of the Archbishop of Canterbury.—Vide Appendix.

51 Edw. III.—The case of Hugh Suffolk (called Fastolf, in Rot. Parl.)—Vide Appendix.

The Archbishop of Canterbury had, of his own accord, stated in Parliament, that he had been defamed throughout the kingdom and elsewhere, and prayed the King that he might be arraigned before the Peers, which the King granted. Afterwards, certain of the Lords were appointed

pointed to hear the answers of the Arch-
bishop; and if the answers should be con-
venient, the King of his good grace would
excuse him. *Et en cas qu'il semble au Roi
& à son conseil, que meismes les respons ne
sont mye suffisantz, adonques les ditz res-
pons seront débatuz en prestbein Parle-
ment, & illoques out juggement rendu.* From
this, it certainly appears that the arraigh-
ment and answer might be made in one
Parlement, and that judgment might be
given in the next.

The Record of 51 Edw. III. states, that
Hugh Fastolf *sur le syn du dernier Parle-
ment* had been accused of extortion, and
Commissioners had been appointed to in-
quire into it, after the rising of the Parlia-
ment, who now report that, by several
inquests, he had been acquitted.

Those who know that, in the infancy
of the House of Commons, writs of sum-
mons issued almost every year to the She-
riff, for a new Parliament, and that a
few

few years before, in this reign, it had been enacted, that * a Parliament should be held once every year, or oftener, if need be, would be apt to suppose that the next Parliament, in these two cases, must have meant a Parliament after a dissolution.

But, upon looking into Prynne's *Parliamentaria Rediviva*, I find that these are two of the rare instances in which writs did not issue to the Sheriff till after the second year; so that the *preschein* Parliament after the 15 Ed. III, and the *darrein* Parliament before the 51 Ed. III, must have been, in one case, the second Session, and, in the other, the first Session of what we now call a Parliament. That Parliaments, in ancient times, sometimes, if not frequently, signified nothing more than a Session, appears from the construction which has generally been put upon the word Parliament, in the stat. of 4 Ed. III, above cited.

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And

* 4 Ed. III, c. 14.

And, from a consideration of these, and the other precedents, they confine their report to prorogations, when they conclude that “ businessses depending in one Parliament, or Session of Parliament, have “ been continued to the *next Session* of the “ *same* Parliament;”—and, if they had found any thing in point, in the case of a dissolution, they would unquestionably have stated it; because whatever proceeding would survive a dissolution, *a fortiori* would survive a prorogation.

But the references to the Committee, on the 11th of March and 17th of March, 1678, are confined to the effect of a dissolution; and the order of the House, upon the report of this Committee, with the cases which followed, would have been conclusive and decisive at present, that a dissolution did not disturb an Impeachment, if this order had not, a few years afterwards, been reversed and annulled.

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It is remarkable, that no precedent, authority, or principle whatever, is cited or referred to by the Committee, for this precipitate and confident report.

But let us consider under what circumstances this Order of the House was made.

On the 5th of December preceding, Lord Stafford and four other Lords had been impeached for being concerned in the Popliff-Plot; Lord Danby had been impeached also some time afterwards in that month; and articles had been exhibited against him by the Commons, charging him with high treason. In January following, the Parliament was dissolved, and the new Parliament met again in March; and one cannot but suppose, that the Lords were infected with the madness of the times, or were struck with the general panic, when the Committee report within two days, and the House order, without any precedent, or semblance of authority, that the Impeach-

ments were not affected by the previous dissolution.

But, in consequence of this Order, the proceedings were continued in the next Parliaments against Lord Danby and Lord Stafford. The course of the proceedings against Lord Stafford was as follows :

* Anno 1678.

December 5, Impeached by the Commons.

December 28, Examined.

In the next Parliament, Anno 1679.

April 9, Heard his Accusation read.

April 26, Put his Answer in.

In another Parliament, Anno 1680.

November 12, His trial appointed.

December 7, Condemned.

From whence it appears, that this Impeachment was pending in three different Parliaments. After he was pronounced guilty,

* Vide Appendix.

guilty, he urged this in arrest of judgment, and prayed that he might have counsel to argue it, which most unreasonably and unjustly was denied him; so that the prisoner, who, from his fears, or the natural imbecillity of his mind, seems to have been in a state of confusion and stupidity during the whole of his trial, was left to suggest feebly to the Court, that there was no precedent to support the proceeding; and Sir William Jones and Serjeant Maynard, two of the managers, did not condescend to take farther notice of the objection, than by referring to the Order of the Lords, on the 19th of March, 1678*.

But Parliaments deserve little credit for the correctness of their proceedings, in times when the House of Commons could contend that the King had no power to pardon a person impeached, and that the Bishops had no right to vote upon any question, in capital cases, in the High Court of Parliament. I shall only ob-

* Vide State Trials, Vol. II. p. 696.

serve, upon these points, that no principle or authority can be found, in which the King's prerogative to pardon, the equity of our criminal law, has ever been restrained but by the united concurrence of the Legislature.

It is true, that it does not extend to the barbarous and savage proceeding of appeal, which still remains a disgrace to the English Law; a prosecution which has not for its object the purposes of public justice, but the gratification of private revenge, that the misery and death of the offender *sint solatio cognatis interemptorum*.

With regard to the other point, the Bishops retain their seat and voice in Parliament by a more ancient title than perhaps any of the temporal Peers can produce at present, except the Duke of Norfolk, from his possession of the Castle of Arundel. The trifling quaint, observation transmitted even by My Lord Coke, that

that they are not noble by blood, can signify nothing more than that their issue will not inherit their rank and dignity: so that to say a Bishop is not entitled to all the privileges of Peerage, because his blood is not noble, communicates no more intelligence to the mind, than to assert that a Bishop is not entitled, because he is a Bishop; for it will hardly be contended that his Majesty cannot by his patent make a Peer for life, who should in every instance be entitled to the rights of Nobility. And I should think that a doubt will never again be entertained, that the Bishops have every right and privilege of Peerage, which is consistent with the Canons of the Church, or which they have not voluntarily relinquished or lost by desuetude.

I make these short observations upon those important subjects, which, I conceive are now well understood, in order to remark, that in times when such illegal and unconstitutional positions were advanced, little respect can be shown to resolutions

resolutions unsupported by principle or authority.

In 1682, Lord Danby moved the Court of King's-Bench, that he might be admitted to bail; and he argued his case with great learning and ability*: he asserted that the Impeachment was at end by the dissolution; otherwise, as it was uncertain when another Parliament would be assembled, his imprisonment might be indefinite, or for life, which was repugnant to the spirit of the English Law and Constitution. The Court declared that his arguments had great force, but that they must remand him till the rest of the Judges were consulted upon a question of such magnitude. There is no report, that I am acquainted with, of the opinion of the Judges; but, in February 1683, he and the other Lords were bailed to appear the first day of the next Parliament, he having been in prison near five years, and the other Lords more than that time.

This
 * Vide his Speech, State Trials, Vol. II. p. 203.

This was certainly a bold measure of the Judges, while the order of the 19th of March, 1678, stood unrepealed. I should think that our Judges at present would scarce release out of custody, after a dissolution, a person committed by the House of Lords for high-treason, unless they were convinced that the prosecution, which was the ground of that commitment, was determined.

No Parliament sat from 1681 till the 19th of May, 1685; upon which day, the first and only Parliament of James II. assembled, when Lord Danby and the other four Lords appeared, agreeably to their recognizance, and presented petitions stating the circumstances of their respective cases, and prayed that the Lords would bring them to a speedy trial, or do whatever they might think just: upon which, the question was put, Whether the Order of the 19th of March, 1678, shall be reversed and annulled as to Impeachments?—It was resolved in the af-

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firmative,

firmative, three Lords only protesting against it: and upon this, Lord Danby and the four Lords were discharged, with their sureties, from their recognizance. It must be observed, that there is another case, which happened after the Order of the 19th of March, 1678, and before its reversal; in which an Impeachment was continued after a dissolution; that is the case of Sir William Scroggs, Chief Justice of the King's-Bench: on the 7th of January, 1680, he was impeached, and articles were then exhibited. On the 18th, Parliament was dissolved; on the 21st of March, the new Parliament met; on the 24th of March, the answer of the Chief Justice was read; but nothing farther was done in it*.

I apprehend that these are the only instances in modern times, and perhaps one may add, in all times, in which the proceedings of an Impeachment were continued beyond

* Vide Appendix, the Report on the 25th of May, 1717.

beyond a dissolution; and it is clear they have no other authority and foundation, but that Order of the House of Lords, which has since been reversed and annulled.

We hear nothing more of this Question till the 5th of April, 1690; when an Order was made, that a Committee should inquire, "Whether Impeachments continue from Parliament to Parliament;" but, on the 7th of July, 1690, the Parliament was prorogued, and no report had been made: but, on the 2d of October, 1690, the Parliament met, after the prorogation, when Lord Peterborough and Lord Salisbury, who had been impeached on the 26th of October, 1688, in a former Parliament, of high treason, presented petitions to the House of Lords, stating they had been prisoners in the Tower near two years, and prayed the House to take their case into consideration. On the 6th of October they are bailed; and on the same day a Committee is appointed to inspect and

examine precedents, whether Impeachments continue in *statu quo* from Parliament to Parliament. On the 30th of October, the Lords Committees produce the Cases in the Appendix; upon a consideration of which, by the House, Lord Peterborough and Lord Salisbury were discharged from their recognizances.

This is a most important Precedent; for it is resolved upon, after a full and solemn investigation of all the preceding cases; and it ought not to pass unnoticed, that this Committee called in the assistance of one of the most learned antiquarians of the age, Mr. Pettyt, that champion for the antiquity and dignity of the House of Commons, that *asserter of the ancient rights of the Commons of England*, who would have been in raptures, if he could have produced authorities to have extended their power and jurisdiction*.

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* At the end of this Report of the Committee, it is stated that Mr. Pettyt's Clerk read four records to the House,

The next and last time that this question came into discussion, was in the year 1717. The Earl of Oxford and Mortimer had been impeached of high treason, and of high crimes and misdemeanors, on the 9th of July, 1715, when he was committed. In September afterwards, he answered, and the Commons replied and joined

House, the dates and numbers of which are given, but no abridgment of them.—(Vide Appendix.) Those in the 15 and 51 Ed. III. are the cases of the Archbishop of Canterbury and Hugh Fastolf, which have already been noticed. The Record, 4 Ed. III. No. 16, is given at length in Foster's Fourth Discourse, p. 387; from which it appears, that Thomas de Berkele was tried in full Parliament by a jury of Knights, for being concerned in the murder of Ed. II. of which charge the jury completely acquitted him; but, because he had appointed those persons his servants who had murdered the King, he was committed till the next Parliament, to hear his judgment, &c.—This was in the 4th of Ed. III; there are no new writs in the 5th of Ed. III; so that, on the day of this trial, probably a long adjournment (perhaps over Christmas) had been expected. The fourth Record referred to, I have not been able to find in the Collection of the printed Records.

joined issue. On the 26th of June, 1716, the Parliament was prorogued. On the 20th of February afterwards, the Parliament met after the prorogation, on which day the Earl of Oxford presented a petition to the House of Lords, praying their Lordships to take his case under consideration, and that his imprisonment might not be indefinite: upon which it was ordered, that all the Lords should be a Committee, to search for and report such precedents as relate to the continuance of Impeachments from session to session, or from Parliament to Parliament.

On the 25th of May, 1717, they report as in the Appendix; and it is resolved by the House, that the Impeachment of the Commons against the Earl of Oxford was not determined by the intervening prorogation of the Parliament.

From the Lords debates, it appears that the division upon this question was 87 to 45; so that 45 Lords at that time were
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of opinion, that an Impeachment abated by a prorogation. Ten Lords protested against the resolution; and the mode of reasoning, in the protest of the dissentients, is a strong authority with regard to a dissolution.

“ Dissentient,

“ Because there seems to be no difference in Law between a prorogation and a dissolution of a Parliament, which, in constant practice, have had the same effect, as to determination, both of judicial and legislative proceedings; and consequently the vote may tend to weaken the resolution of this House, May 22, 1685, which was founded upon the law and practice of Parliament in all ages, without one precedent to the contrary, except in the cases which happened after the Order made the 19th of March, 1678; and, in pursuance hereof, the Earl of Salisbury was discharged in 1690.”

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It is manifest, from this protest, that it must have been the decided and unanimous opinion of the House of Lords, that it would have been determined by a dissolution; for it is here assumed as a first and uncontrovertible principle; and if the next step were true, viz. that there was no difference between a prorogation and a dissolution, the conclusion of the dissentients would have been a strictly mathematical truth deduced from a mathematical demonstration.

I confess, that none of the cases produced by this Committee, appear to me to prove much, except the first, with respect to the present inquiry: but Drake's* case, in my opinion, is a very strong instance to show the prevailing opinion of the House of Lords, in the year 1660: for, after his conviction, by his pleading guilty, the Lords must necessarily have thought that the Impeachment would be determined by the dissolution, and that they

* Vide Appendix, 25 May, 1717.

they could not give judgment in the next Parliament without a fresh trial; for, if that had not been their opinion, it is highly probable they would have wished to have given judgment themselves; and besides, if it had not been at an end, I apprehend the Attorney-General could not prosecute for the same offence, in the inferior Courts.

* Fitzharris, who, though a Commoner, was impeached by the House of Commons, in 1681, for high treason (another instance of the wild unconstitutional experiments of those times), was indicted, and pleaded to the indictment, that there was an impeachment pending against him for the same crime. This plea was over-ruled by the Court of King's-Bench—No reason is assigned by the Court. But as the Lords afterwards rejected the Impeachment of Fitzharris, the inferior Courts would now be justified in declaring such a plea bad, from the inefficacy or nullity of the Im-

F peachment :

* State Trials, Vol. II. p. 706.

peachment: but where a person is impeached, before the House of Lords, of crimes of which they legally and constitutionally have cognizance, the pendency of the Impeachment, I apprehend, might be pleaded in abatement to an indictment; otherwise this solecism would be the consequence, that a person might be punished in two different Courts for the same offence. I am aware that it has been held*, that the pendency of one indictment cannot be pleaded in abatement to another, for the same offence; but I should think that this must be confined to indictments in the same Court.

But, upon this subject, as I find nothing certain, I speak with diffidence: but it is surely not unreasonable to suppose that the Lords thought their jurisdiction at an end, when they directed the Attorney-General to commence a fresh prosecution.

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* R. v. Stratton Doug. 228. 2 Hawk, c. 34. sect. 1, &c.

The case of the Duke of Leeds* seems, *primâ facie*, rather in favour of the continuance of the Impeachment in *statu quo*, than of its abatement; for though the Commons did not prosecute after the dissolution, yet, if it had actually been concluded by that event, the Lords might have spared themselves the trouble of dismissing it: but, on the very same day they had dismissed an Impeachment brought against Lord Halifax, in the same session, for want of prosecution; and they thought perhaps it would cost them little, to pay, almost at the same breath, the same compliment to the Impeachment of the Duke of Leeds.

Peter Longueville† had been impeached, but was never prosecuted after the dissolution; but eight of his associates had been convicted, and heavily fined: so the Commons might reasonably think that preventive justice had been sufficiently satisfied.

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* Vide Appendix, 25 May, 1717. † Ibid.

It is remarkable, that Lord Stamford's seems to be the only case of an indictment which was not prosecuted with effect, in the same Parliament to which the indictment was sent; but, as it does not appear that he ever was arraigned, or pleaded to the indictment, I can hardly think that any inference can be drawn from it. I should suppose, that an indictment, properly found by an inquest of 12 men, can never discharge its office till it is quashed by an act of the court, or the party has pleaded to it. The words of the *certiorari* are, that "We * do command you (the Justices of Oyer and Terminer), that you do send, under your seals, before us, in our present Parliament, all and singular indictments, &c." Upon the return of this writ, the indictment must be in the custody of the Clerk or *custos rotularum* of the House of Lords; and I should think that, without further *certiorari* or mandate,

* Vide the case of the Duchess of Kingston, Vol. XI. Harg. State Trials.

mandate, the next or any Parliament might proceed upon it, like a commissioner of gaol-delivery, when the defendant is in custody, upon the Coroner's inquest, or an indictment found at Quarter-Sessions; and I should imagine, that there could be little doubt but the Clerk of Parliament might be directed, by *certiorari*, to send this indictment to the Court of the Lord High Steward. Why the prosecution of My Lord Stamford was not continued, I am not at present apprised.

Upon a general review of these Precedents, it appears that there never was a case in which the proceedings of an Impeachment were continued after a dissolution, before the Lords made the Order of the 19th of March, 1678; and that the cases of Lord Stafford and the other four Popish Lords, Lord Danby, and Sir William Scroggs, were legalized by no authority but that Order. The case of Lord Peterborough and Lord Salisbury was decided, after a full investigation and mature consideration of principles and precedents

anterior to 1678, and from a conviction that the three subsequent cases had no legal and constitutional foundation: the authority also of this precedent derives such strength from the proceedings in My Lord Oxford's case, as to bid defiance to every attack which industry or ingenuity can make against it.

But I shall now examine how far this case is fortified by principles.

Impeachment is a species of criminal prosecution which modern times have reduced to system and consistency. It is certainly *sui generis*, and in many great points dissimilar and unanalogous to every other kind of criminal procedure. The House of Commons, when they impeach, have been denominated, by high authority, the * *solemn Grand Inquest of the Nation*; but this must be regarded rather as a compliment to exalt their dignity, than an assertion that, in reality, they exercise the functions of a Grand Jury, and are to be governed

* Lord Hale, P. C. 150.

governed by the same rules. If we pursue the allegory (and in truth it is nothing more) we should degrade the Lords to the less dignified character of the *Petty Jury of the Nation*.

With the same propriety, the Attorney-General, who *ex officio* can file an information for a misdeameanor committed in any part of the kingdom, upon which the defendant may be tried, without the intervention of a Grand Jury, might be called a Grand Inquest of the Nation. The Commons, in one case, like the Attorney-General in the other, are, in every stage of the proceeding, merely prosecutors; but, as they prosecute in the name of themselves and all the Commons of Great-Britain, they need not require a more honourable appellation.

When they inquire whether there are grounds to impeach, they do nothing more than what is done by every conscientious prosecutor, who, with scrupulous caution,

caution, will convince himself that there is a just reason, or *probable cause*, to prefer the accusation; and both from principles of justice, and the current of authorities, the House of Commons are bound to admit the party to go as far into his defence as he may think proper, or be advised.

But though the House of Commons are the prosecutors who have joined issue with the defendant in an Impeachment, I should think it but a puerile argument, that the Impeachment is at end by the extinction of that House, as an appeal or action abates by the death of the plaintiff. *All the Commons of Great-Britain*, whether the expression may be taken in the ancient sense of the *electors*, or in the modern vulgar acceptation of *the people at large*, may be presumed, like the King *, never to die; but, as the new House of Commons,

* Though, if one be indicted in the time of one King, and pleads to issue, and afterwards the King dies, he shall plead *de novo*. 7 Co. 31. but now *contra*, by 1 Ann. c. 8.

mons, and the new managers, may be supposed to be perfect strangers to the party, to the charges of the accusation, and to the progress of the suit, one would be apt to suspect that the prosecution would be an unconnected and incoherent performance, unless the new House adopted the same means to obtain information as the preceding House; that is, by an original inquiry: and how is it possible that these strangers can be convinced of the justice and propriety of the continuation of the trial, but by an examination of the whole House, or a report from their Committees, or, in short, but by the same means by which the justice and propriety of its commencement at first were manifested?

When we look back to ancient times, we behold much confusion and obscurity; but yet there are certain objects which the admirers of antiquity can distinctly delineate: they all, or in general, agree, that

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when the Commons, or a certain number of the minor Barons, or free tenants of the Crown, were compelled by the King to attend the High Court of Parliament (a duty from which they had before been exempted, and a right which they seldom had had an inclination to assert), being too numerous, or too diffident, to sit in the same House with the Lords or greater Barons, they became humble petitioners to the King and to the Lords, to redress the grievances with which they and the country were oppressed*. Their petitions, either by stating general complaints, contained a prayer to provide measures to prevent, or, by describing particular offenders, a request to punish and correct; and the grant of the petition with *Soit droit fait comme il est désiré*, or *Le Roi le veut*, became the judgment of the Court, or the law of the land.

The
 * *Les Communes prient à nostre Seigneur Roi, & à son Conseil, &c.* in the old Statutes and Records, *passim*.

The one species of petitions was the origin of Impeachments; the other, of Acts of Parliament*. These are coëval, and so nearly related to each other, that they still bear a striking resemblance. Selden, in his *Judicature of Parliament*, says, that in ancient times the King expressed his assent to the judgment in an Impeachment for treason or felony. The conviction had then the declared concurrence of the Three Estates of the Legislature. The Impeachment of a Commoner frequently contains a considerable portion of legislation; and it is generally understood, that the two Houses of Parliament may create both a crime and jurisdiction unknown to the Common Law, as administered by the inferior Courts†; for, till

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* Vide Preface to Ruffhead's Statutes; Reeve's History of English Law, Vol. II. p. 84, 276, 328, &c. where that learned author finds much difficulty to mark the progress of these petitions.

† The House of Lords, in Fitzharris's case, rejected the Impeachment for treason, in conformity with

the 13th of Geo. III. c. 63*, no offences whatever, except murder, committed in India, were cognizable in the ordinary Courts of Justice in England; but, if any vicious

with the declaration of the Barons, in the case of Simon Beresford, 4 Ed. III. 4 Bl. Com. p. 259; because he was not their peer, and other Courts were competent to bring him to justice: but they have never declared that they will not receive an Impeachment for a misdemeanor cognizable in the inferior Courts by indictment or information. Indeed, there seem to be several cases to the contrary. Drake's case clearly proves that the libel was such, that the Lords thought that the Attorney-General might prosecute: Dr. Sacheverell, I apprehend, might also have been proceeded against by indictment or information. This difference of conduct in cases of felony and misdemeanor, is not, I think, easy to reconcile.

* This act contains a section which provides, that, when the Chancellor, or Speaker of the House of Commons, shall send to India for evidence, no bill, or other proceeding depending in Parliament, shall be determined by a prorogation or dissolution, till the evidence arrives: but the clause is drawn with great caution, to prevent Parliament from expressing any opinion applicable to an Impeachment. So, from this act, no argument can be raised,

vicious or ruinous act had been committed there by a British subject, the perpetrator, I conceive, might, in all times, have been compelled to answer for it as a *high crime and misdemeanor*, in an Impeachment before Parliament.

I premise this parity in the origin, and similarity in the exercise, of the legislature and judicature of Parliament, to suggest, that, in doubtful cases, it is not unfair to draw an inference from the one to the other, and to conclude, that if the two Houses, after a dissolution, have not power to complete an imperfect Act of Parliament, they have not jurisdiction to continue an unfinished Impeachment.

But the great principle upon which all proceedings depending in Parliament are or were determined by a dissolution, is this, viz. that the writ or commission by which the Court sat and exercised jurisdiction, is at an end. It is now a common observation in every company, upon
this

this subject, that, as the House of Lords is a Court of Record, their proceedings must continue in *statu quo*, like the proceedings of the Courts at Westminster, and the Court of Quarter-Sessions.

I am inclined to think, too, that the continuation of the proceedings in all Courts ought to be precisely the same, unless a satisfactory reason can be assigned for the difference; and, by the Common Law, I apprehend, the High Court of Parliament, the Courts at Westminster, the Court of Quarter-Sessions, and perhaps all other Courts, were subject to the same rules, with regard to the commencement and termination of their jurisdiction: but several Acts of Parliament have made regulations in the Courts of Westminster and Quarter-Sessions, which have not extended to the Court of Parliament itself.

It is a general principle in the English Law, that the King is the fountain of all jurisdiction, and that all Judges derive their

their authority from him by commission or writ; which words are frequently, upon this subject, synonymous*: and it is also another general principle, that, upon a revocation or dissolution of that commission, all causes and proceedings before the Judges appointed by it, were determined, and must be commenced *de novo* before their successors. This latter principle seems to be grounded upon a fundamental rule of justice, that no Judge shall condemn whom he has not heard, or whom he has but partially heard; and the proceedings before his predecessor must, with respect to him, be considered *coram non judice*. Upon the death of the King, all commissions were dissolved; and consequently, all writs and causes pending before the commissioners abated, and must have been instituted afresh. Chief Baron Comyns says, " At Common Law, all actions abated by the demise of the King, and the defendant went without day." Much learning upon this subject, may be seen in the first

* 2 Hawk. 20.

first chapters of 2 Hawkins's Pleas of the Crown; Comyns's Digest. Abatement, H. 38; 7 Coke's Reports, 30, where there is a chapter upon the discontinuance of process, by the death of Queen Elizabeth; and the statute of 1 Ed. VI, c. 7, which, by its provision for the future, will give the reader a perfect idea of the effect of the dissolution of a commission, in the inferior Courts, by the Common Law. By virtue of commissions from the King, the Judges of the different Benches at Westminster, and the Justices of the Peace, exercise their authority. The Terms at Westminster, and Quarter-Sessions in the country, are only prescriptive or statutable times, from which and to which they continue and adjourn their jurisdiction; but, whenever their commissions expired, all causes before them were determined. By the Common Law, a new commission of the peace was a *supersedeas* to, or a dissolution of, the former commission, and all businesses pending before the Justices must have been at end; for it is expressly provided,

vided, by 1 Ed. VI. c. 7, that no process shall be discontinued by the grant of a new commission.* The same is also provided with respect to several other commissions.

In consequence of several acts of parliament, intended to secure the independence of the Judges, and the permanence of their proceedings, the commissions of the four Judges of any one Bench can hardly ever be annulled at once, and the act of any one of them is effectual†; but, if all the Judges, for instance, of the Court of King's-Bench, should die before a new patent was granted, I apprehend, that all actions and prosecutions would be as much determined as they were by the demise of the King, before 1 Ed. VI. c. 7. Commissioners of Oyer and Terminer must both hear and determine the whole of a prosecution before them; and consequently the Commissioners, under one commission, can have no cognizance whatever of what

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* Vide also 11 Hen. VI, c. 6. † 2 Hawk. 3.

passed under those appointed by a former commission. Commissioners of Gaol-Delivery can try a prisoner upon the Coroner's Inquest, or upon an Indictment found by the Grand Jury at the Quarter-Sessions; but, by the Common Law, if a prisoner had been tried by a Commissioner of Gaol-Delivery, and had been found guilty by the jury, but no sentence had been passed upon him, the next Commissioner of Gaol-Delivery had no authority to pronounce judgment; and, if he had been put again upon his trial, he might, it seems, have pleaded *autrefois convict*; for the
 “ plea * of *autrefois convict*, or a former
 “ conviction for the same identical crime,
 “ though no judgment was ever given, or
 “ perhaps will be (being suspended by the
 “ benefit of clergy, or other causes), is a
 “ good plea in bar to an indictment; and
 “ this depends upon this principle—that
 “ no man ought to be twice brought in
 “ danger of his life for one and the same
 “ crime.”

Therefore,

* 4 Bl. Com. 336.

Therefore, when a felon had been convicted by a verdict, if the Judge had neglected to pronounce judgment upon him before his commission expired, the convict must afterwards have been discharged, for he could neither be sentenced nor re-tried by another Judge; and therefore, to provide against this case (probably some remarkable instance had occurred), it is expressly enacted by 1 Ed. VI. c. vii, l. 5, " that the Justices of Gaol-Delivery shall
 " have full power and authority to give
 " judgment of death against such person
 " so found guilty:" and My Lord Coke says, " Before this act, at the Common
 " Law, if a man had been indicted and
 " convicted by verdict or confession, before
 " any Commissioners, and, before judgment, the King died, in that case, no
 " judgment could have been given; for
 " the King, for whom the judgment
 " should have been given, was dead; and
 " the *authority of the Judges who should*
 " *give judgment, was determined*; and this
 " act doth remedy those special cases.*"

The

* 7 Co. 30.

The reader's mind cannot but anticipate the application of those general and extensive principles to the writ, or commission, by virtue of which the High Court of Parliament is constituted. When the king has ordered * *quoddam parliamentum nostrum teneri*, or, a certain Parliament to be holden, each Peer has a right *ex debito justitiæ* to a writ of summons; but he has no inherent legislative, or judicial capacity annexed to his person; and till he has received his writ of summons, or commission, he has no right either to a voice or seat in Parliament; to this commission, he owes his authority; and that power which can create, can at any time destroy; so the jurisdiction of the Lords, like the jurisdiction of all Judges and Justices by the Common Law, can, at any time, be determined by the act, or the death of the King†. It is no argument, to say that their

* These have been the words, in all times, both in the Lords' writs and Commons' writs.

† By 6 Ann. c. 7. continued six months afterwards.

their proceedings ought to continue in *statu quo*, because they are the same persons; for the same Judges might, upon a vacancy of their commissions, have been appointed to the same bench: yet we have seen, by the Common Law, every cause must have been re-heard.

And, in fact, the present House of Lords may consist of entirely different members from the next House of Lords; for, one half might either not insist upon having their writs of summons, or might be excused their attendance in one Parliament, and the other half in another.

With regard to the probable change among the Scotch Peers, no argument can be drawn from that circumstance, because, whatever was the law upon the subject, before the year 1707, it was not intended to be altered by the Act of Union with Scotland.

If

If the question was nearly *in equilibrio*, perhaps the convenience or inconvenience of present circumstances, might cause one side or the other to preponderate.

From these principles, we see the difference of the effect of a prorogation and dissolution; for, after a prorogation, the Lords and Parliament still sit under the same commission, and a prorogation is exactly similar to an adjournment from term to term, and from quarter-sessions to quarter-sessions*.

I understand that writs of error, and the Scotch and other appeals, still remain in

* 1 Lord Raymond, 343. Treby, Chief Justice, and the Court, declare, that the principal of the Parliament is the King; and when he comes to meet the two Houses, then the Parliament begins. And this resembles the holding of other Courts, viz. when the Judges come, the Court is said to be held. The adjournment of the Houses is the act of each House: but when the Parliament is adjourned by the King, they call it a prorogation. Heretofore adjournments and prorogations were looked upon as the same thing, but the effects of them are very different at this day.

in *statu quo*, after a dissolution; but I conceive this practice has no other foundation, but the extraordinary Order of the 19th of March, 1678, which was only *reversed and annulled as to Impeachments*; for, in the case of *Heydon v. Godsalve*, Cro. Jac. 342. Croke says expressly, that the “ Court all
 “ held (of whom Lord Coke was one), that
 “ a writ of error in Parliament is, by the
 “ dissolution of the Parliament, determined.”

This practice, with respect to appeals and writs of error, may be very useful and convenient; but it ought to have been introduced by an act of the Legislature, and not by the arbitrary fiat of the Lords themselves. It would be highly consistent with the dignity of the House of Commons, and conducive to the general interests of the kingdom, that they should examine witnesses upon oath; but it is to be hoped, that no oath will ever be administered there without the sanction of an Act of Parliament. That single instance might be wholesome and salutary; but, if they could do one lawless act for our benefit,
 they

they might do ten thousand for our destruction.

No one, I think, can doubt that the Court of the Lord High Steward begins and ends with the High Steward's commission, and therefore, if the commission should be dissolved before the conclusion of the trial, that it would be completely terminated; and I should even think that the indictment would be so annulled, that, if the trial of the Peer could be recommenced, a fresh indictment must be found by a Grand Jury. This is a case which might easily happen, either by the death of the High Steward, or by the death of the King; for the continuation of this commission is not provided for by any Act of Parliament. And if the High Steward had proceeded with the trial till the Lords triers had pronounced a verdict of *guilty*, and then the commission had become vacated by death, if *autrefois convict* is a good plea in bar, I should conclude that the convicted Peer could not afterwards receive

receive judgment, nor consequently execution; and it would be precisely the case already mentioned before a Commissioner of Gaol-delivery. And what difference can be pointed out between a conviction before the High Court of Parliament, if their commission should cease before judgment is pronounced, and this case, I confess, I have not invention enough to form a conjecture.

Mr. Justice Foster* has clearly and ably shown, that in time of full Parliament the commission of a High Steward does not constitute any essential ingredient of the jurisdiction of the Court, and that the Steward is appointed merely to add dignity and solemnity to the occasion.

But still it must be presumed, that his commission will be consistent with the writ or commission of the Peers; and therefore what is clear in the one, may fairly be admitted to explain what is doubtful in the
I other.

* 141, &c.

other. Now the commission of the High Steward, both in cases of impeachments and indictments before the High Court of Parliament, is expressly confined to the present Parliament; and the indisputable intent and meaning is, that the party must be *heard, examined, sentenced, and adjudged*, in one and the same Parliament. The words of part of his commission are these: "We, considering that justice is an excellent virtue, and pleasing to the Most High, and being willing that the said Elizabeth,* of and for the felony whereof she is indicted as aforesaid, *before us in our present Parliament*, according to the law and custom of our kingdom of Great-Britain, may be *heard, examined, sentenced, and adjudged*, and that all other things necessary may be executed, &c. we have ordained and constituted you Steward of Great-Britain, &c. to execute *for this time the said office.*"

The
 * Duchess of Kingston, State Trials, Vol. XI.
 p. 198.

The same words of *coram nobis in præ-
senti Parlamento audiatur, sententietur, &
adjudicetur*, are used in every High Stew-
ard's commission when a Peer has been im-
peached in the High Court of Parliament.

The words "for this time," or *pro
hac vice*, certainly import that the High
Steward shall execute his office during the
whole of the trial; but the words *in præ-
senti Parlamento adjudicetur* restrain it to
the present Parliament: so, if the im-
peachment or trial could continue beyond
the present Parliament, this dilemma would
ensue—either the Steward does not execute
his office *pro hac vice*, or the party is not
in præsenti Parlamento adjudicatus; and
therefore a repugnancy would arise in the
commission, and one part of the King's
will must necessarily be frustrated.

These solemn and ancient records have
been held, by all Judges, in all times, the
strongest evidence of what the law is; and
it can hardly be supposed that a commission

which has issued upon the most awful occasions, when every iota has been weighed, a commission which has always been executed by men of the most profound learning and splendid talents in the State, a commission too transcendent in its powers ever to be entrusted to a subject, but when the justice of the nation calls for it, should be composed in such a manner that any event should render it incongruous and absurd; and therefore it is not too much to conclude that no such event can exist.

These are all the authorities which have occurred to the Author of this Examination in the course of his inquiry: and he can assure the Reader that he has suppressed nothing which he thought material or relevant on either side; and however erroneous his own observations and constructions may be, he has stated nothing with an intent to mislead. The only prejudice which he feels upon the subject, is in favour of an opinion which he has collected with some degree of labour, and what
arises

arises from a natural anxiety to convince others of what he has convinced himself. The only inducement which he has to conceal his name, is an apprehension that, in a short compilation like this, from error and inaccuracy there might be much to censure, and even from correctness nothing to commend : but he can affirm, that he is one who is solicitously desirous of being always thought a strenuous asserter of the dignity and privilege of Parliament, and a zealous advocate for the public justice of the Nation, but who from some attention to the English Constitution has taught himself that in this Country nothing can be *public Justice*, which is not administered by the hand of the *Law*.

APPENDIX.

which have a great variety of objects
of view of great interest to the
eye. The only objection which has been
made to this mode of viewing the
country is that it is not so good as
a view from a hill or a mountain.
But this is not a valid objection.
The view from a hill or a mountain
is only a view of the country from
a single point of view. The view
from a hill or a mountain is only a
view of the country from a single
point of view. The view from a hill
or a mountain is only a view of the
country from a single point of view.
The view from a hill or a mountain
is only a view of the country from
a single point of view. The view
from a hill or a mountain is only a
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point of view. The view from a hill
or a mountain is only a view of the
country from a single point of view.

ALBANY

A P P E N D I X.

Extracts from the Journals of the HOUSE of LORDS.

Die Martis, 11^o die Martii, 1672.

ORDERED, by the Lords Spiritual and Temporal, in Parliament assembled, That it be referred to the Lords Committees for Privileges, to consider whether an appeal unto this House (either by writ of error, or by petition) from the proceedings of any other court, being depending and not determined in one session of Parliament, continue in *statu quo* unto the next session of Parliament, without renewing the writ of error, or petition; and report their opinion unto the House.

Die Sabbati, 29^o die Martii, 1673.

Upon report made by the Lord Widdrington, from the Lords Committees for Privileges, &c. ' That, in
' pursuance of the matter referred to their Lordships,
' by order of the 11th instant (videlicet), whether an
' appeal unto this House (either by writ of error or
' petition), or any other business wherein their Lord-

ships

ships act as in a court of judicature, and not in their legislative capacity, being depending, and not determined in one session of Parliament, continue in *statu quo*, unto the next session of Parliament, without renewing the writ of error or petition, or beginning all anew, their Lordships considered several proceedings, both ancient and modern (which were produced to their Lordships at the Committee), *videlicet*:

1. In general: Crompton, Parliament 20. A general rule for writs of error depending, to be continued to the next Parliament, and the writ of *scire facias* to be made then returnable.

2. In particular: 18 E. I. *Placita Parliamentaria*, p. 44 and 49, the case of William de Valentia and Isabell Mareschall. William de Valentia had been impleaded, and put to answer, the Parliament before, which was presently after Christmas, at the suit of Isabell le Mareschall, for exercising the office of a Sheriff in the Hundred of Hostereslegh, he pleaded, he did it in the right of his wife, and that he ought not to be put to answer without her; whereupon he had time given for him and his wife to appear as this day, at this Parliament, beginning three weeks after Easter; and Isabell le Mareschall had the same time given to prosecute.

The same year, p. 43, Hugh de Louthet's case; there being a question concerning lands held in *capite*, that had been formerly belonging to one Henry

Henry de Edelyngthorp, then in the possession of Henry de Louthier as his heir; of which Thomas de Normanvill, the escheator, was to give an account this Parliament, for recovering of the King's right upon that descent; and one Adom coming and laying claim to those lands, saying that he was right heir, the escheator is ordered to make inquisition into it by a Jury, *ita quod ad proximum Parliamentum post festum S^{ti} Michaelis distincte et aperte inde respondat.*

21^o E. I. p. 160. Magdolphus Earl of Fife had made his complaint, that John King of Scotland had unjustly taken from him certain lands in the county of Fife. A writ of *scire facias* was thereupon directed to the Sheriff of Northumberland, to warn the King of Scotland to appear before the King in Parliament such a day. The King of Scotland appeared, and made some defence, which did not satisfy; so they were pronouncing judgment against him: but, before it was pronounced, he desired respite till the next Parliament after Easter, to advise with his Council in Scotland; and that then he would come (as he said) *et feray ce que faire devray*, do what in duty he was to do. Upon which, day is given him till the next Parliament, which was to be after Easter, *in omnibus eodem statu quo nunc.*

30 E. I. p. 234. the case of William de Bre— and Walter de Pederton, constable of Kermierdyn, touching the manor of Gower, for which William was summoned in, to do suit and service at the castle

of Kermerdyn; of which he had complained, and
 day had been given to all parties to appear next Par-
 liament: and then it was not determined, but re-
 ferred to a further hearing at the following Parlia-
 ment, which was to be held at Lyncolne, in *Ostabis*
Hillarui; and from thence, after some debating and
 arguings, put off again to this Parliament, in the
 30th of the King, in *Ostabis S'ti Johannis Baptiste*,
 where the business was more fully heard, and course
 taken in it.

The same year, p. 605, some merchants petition
 in Parliament for some debts owing to them, for
 which they have no other shewings but the court-
 rolls, which are in the keeping of the stewards and
 marshals, officers to the King, before whom those
 recognizances were taken, who refuse to shew them
 without special warrant; whereupon they are or-
 dered to bring all their court-rolls to the next Par-
 liament.

15 E. III. N. 8, 43, 49. The Archbishop of Can-
 terbury being arraigned in Parliament (according to
 his own desire) before his peers; the Bishops of Dur-
 ham and Sarum, and the Earls of Northumberland,
 Arundell, Warwick and Salisbury, were appointed
 to hear his answer, the same to be debated the next
 Parliament; and all things touching his arraign-
 ment to remain with Sir William of Kellesby,
 keeper of the privy seal.

51 E. III.

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51 E. III. N. 96. Hugh Scaffolk, of Yarmouth, had been accused, the Parliament before, of divers extortions; whereupon commission had been granted to the Earl of Suffolk and Sir John Cavendish, chief justice, to examine the business; and Sir John Cavendish gave account in open Parliament, that by eighteen inquests he had been found guiltless.

1 R. II. N. 28. The Earl of Salisbury, William de Mountacute, brings his writ of error upon a judgment in the King's Bench, by which Roger de Mortimer Earl of March, father to Edmond, had recovered from him some lands in Wales. The record is brought into the House by the Chief Justice, there to remain; and a *scire facias* awarded, to warn Edmond Earl of March to appear the next Parliament. The next Parliament, 2 R. II. N. 21, 22, 23, 24, the Earl of March appears; saith, the writ was not duly served, for that there was an error in the Sheriff's return; Edmond Mortimer, his grandfather, being there said to be an Earl, which he never was. The Earl of Salisbury, on the other side, affirmed it to be a good return. So, there being difficulty in the matter, and the Parliament drawing towards an end, day was given to both parties till next Parliament, with all advantages; and the matter to stand as now it doth.

7 R. II. N. 20. The Prior and Convent of Montague complain of a judgement given in the King's Bench, in behalf of Sir Richard Seymor, in which due form had not been observed, and obtains to have them

‘ them amended : then prays the whole judgment to
 ‘ be reversed, for certain errors ; and a *scire facias*, for
 ‘ Sir Richard to appear the next Parliament. All
 ‘ which was ordered ; and the old process and record
 ‘ to be at the same next Parliament.

‘ 13 R. II. N. 15. Sir Thomas Metham brings a
 ‘ writ of error upon a judgment in the King’s Bench,
 ‘ by which he was to pay five hundred marks to John
 ‘ Afke ; and prays for a *scire facias*, returnable the
 ‘ next Parliament, for Afke then to appear. Which
 ‘ was granted.

‘ 15 R. II. N. 22. John Sheppy brings his writ of
 ‘ error for a judgment in the King’s Bench, given in
 ‘ the behalf of the Prior of Huntington : ordered a
 ‘ *scire facias*, to warn the Prior to appear next Parlia-
 ‘ ment, to abide the order therein to be taken ; and
 ‘ the whole record and process to be then there.

‘ N. 24. Edmond Boffett prays a *scire facias*, for a
 ‘ judgment given in the King’s Bench, for several
 ‘ lands in the county of Sommerfett, between the King
 ‘ demandant, and the said Edmond deforciant. Upon
 ‘ this petition, the *scire facias* is granted ; and it is
 ‘ likewise ordered, that the matter shall continue in
 ‘ the same state until the next Parliament.

‘ 5 H. IV. N. 40. Roger Deyncourt complains of
 ‘ an erroneous judgment given against him in the
 ‘ King’s Bench, for Ralph de Alderley ; assigns the
 ‘ errors ; then a *scire facias* is granted, for Alderley to
 ‘ appear

‘ appear next Parliament. The next Parliament,
 ‘ 6 H. IV. N. 31. this *scire facias* is returned *tardo*
 ‘ *venit*; so a new one is granted, returnable the Par-
 ‘ liament after that, and the process to be continued.

‘ 1 H. V. N. 19. Gunwardby complains of a judg-
 ‘ ment in the King’s Bench, in behalf of John Wind-
 ‘ sor, for several lands in Cambridgeshire; assigns the
 ‘ errors; hath a *scire facias* granted, to warn Windsor
 ‘ to appear at the next Parliament, to hear the record
 ‘ and process.

‘ 3 H. V. N. 19. Cathermaine prays a *scire facias*
 ‘ against William Hore and John Hore, executors of
 ‘ Thomas Hore, for an erroneous judgment given in
 ‘ the King’s Bench, on the behalf of Thomas, upon
 ‘ an action of trespass: it is granted, returnable the
 ‘ next Parliament.

‘ 21 Jac. 28^o *Maii*. The Lord Chief Justice brings
 ‘ into the House the record of judgment given here
 ‘ in the King’s Bench, in *placito transgressionis et ejectio-*
 ‘ *nis firme*, between William Macdonnagh plaintiff,
 ‘ and John Farrar defendant, for lands in Ireland.
 ‘ Macdonnagh makes Thomas Stafford his attorney,
 ‘ by a letter there produced, and proved by two wit-
 ‘ nesses. Stafford assigns the errors; whereupon a
 ‘ writ is ordered, to go to the Chief Justice of Ireland,
 ‘ requiring him to issue out a writ of *scire facias* to
 ‘ the Sheriff of Wexford, to warn Farrar to appear
 ‘ before their Lordships at the next session of Parlia-
 ‘ ment,

ment, to hear the record and process of error in the judgment given in the King's Bench in that cause.

The same day, the Earl of Bridgewater reports from the Committee for Petitions, the opinion of that Committee upon divers petitions, of which his Lordship did then give an account unto the House; and it was, That they should be retained in *statu quo* until the next session of Parliament, which was ordered accordingly.

First Parliament of King Charles the Second, 28 December, several petitions of Awbrey de Vere, Earl of Oxon, Charles Earl of Derby, and Thomas Lord Windsor, were read, concerning the office of the Great Chamberlain of England; and the Lords ordered, That the consideration of the said petitions should be adjourned to the fourth day of the sitting of the next Parliament.

The case of Dame Alifimon Reade, the 4th of April, 1671, wife of Sir John Reade, praying to be relieved against the hard usage of her husband: it was ordered, that counsel on both parts should be heard, on Thursday the 6th of the same April, on which day the Lords ordered, That the further debate of that business should be adjourned to the first Tuesday of the next sitting of the Parliament, after the recess then at hand.

The case of the Lord Delawarr, and the Lord Berkeley of Berkeley, concerning precedency, the

14th

* 14th of April, 1671. It was ordered, that they
 * should be heard on the second Monday of the next
 * meeting of the Parliament after the recess,

Upon the consideration of these precedents, and of
 several others mentioned at the Committee, their
 Lordships came to a resolution, and accordingly de-
 clared it their opinion, That businesses depending in
 one Parliament, or session of Parliament, have been
 continued to the next session of the same Parliament,
 and the proceedings thereupon have remained in the
 same state in which they were left when last in agi-
 tation.

The House, taking the said report into their con-
 sideration, do approve thereof, and order it accord-
 ingly.

Die Martis, 11^o die Martii, 1678.

It being moved, * That this House would declare
 * whether Petitions of Appeal, which were presented
 * to this House in the last Parliament, be still in force
 * to be proceeded on ;

It is ordered, by the Lords Spiritual and Temporal,
 in Parliament assembled, That it be and is hereby
 referred to the Lords Committees for Privileges, to
 consider thereof, and report their opinion thereupon,
 unto this House ; and that the said Lords Committees
 do meet on Thursday next, at three of the clock in
 the afternoon, for that purpose.

Die Lune, 17^o die Martii, 1678.

Ordered, by the Lords Spiritual and Temporal, in Parliament assembled, That it be, and is hereby, referred to the Lords Committees for Privileges to consider, Whether petitions of appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on; as also to consider of the state of the impeachments brought up from the House of Commons last Parliament, and all incidents relating thereunto; and make report thereof unto the House.

Die Mercurii, 19^o die Martii, 1678.

The House this day taking into consideration the report made from the Lords Committees for Privileges, That, in pursuance of the order of the 17th instant, to them directed, for considering whether petitions of appeal, which were presented to this House in the last Parliament, be still in force to be proceeded on, and for considering of the state of the impeachments brought up from the House of Commons the last Parliament, and all the incidents relating thereunto; upon which the Lords Committees were of opinion, That, in all cases of appeals and writs of error, they continue, and are to be proceeded on, in *statu quo*, as they stood at the dissolution of the last Parliament, without beginning *de novo*; and that the dissolution of the last Parliament doth not alter the state of the impeachments brought up by the Commons in that Parliament.

After

After some time spent in consideration thereof,

It is resolved, by the Lords Spiritual and Temporal, in Parliament assembled, That this House agrees with the Lords Committees in the said report.

Die Veneris, 22^o die Maii, 1685.

Upon consideration of the cases of the Earl of Powis, Lord Arundell of Warder, the Lord Belafis, and the Earl of Danby, contained in their petitions.

After some debate,

This question was proposed, Whether the order of the 19th of March, 1679, shall be reversed and annulled, as to impeachments?

The question being put, 'Whether this question should be now put?'

It was resolved in the affirmative.

Then the question was put, 'Whether the order of the 19th of March, 1679, shall be reversed and annulled, as to impeachments?'

It was resolved in the affirmative.

Dissentiente, John Earl of Radnor.

The Earl of Anglesey, before the putting of the above-said question, desired leave of the House to enter his dissent, if the question were carried in the affirmative; which was granted.

Several other Lords desired leave to enter their dissents.

‘ According to the right of Peers to enter their
‘ dissent and protestation against any vote propounded
‘ and resolved upon any question in Parliament, we
‘ do enter our dissent and protestation to the aforesaid
‘ vote or resolution ; for these reasons, among many
‘ others :

‘ 1. Because it doth, as we conceive, extra-judicially,
‘ and without a particular cause before us, endeavour
‘ an alteration in a judicial rule and order of the House,
‘ in the highest point of their power and judicature.

‘ 2. Because it shakes and lays aside an order made
‘ and renewed upon long consideration, debate, report
‘ of committees, precedents, and former resolutions,
‘ without permitting the same to be read, though
‘ called for by many of the Peers, and against weighty
‘ reasons, as we conceive, appearing for the same, and
‘ contrary to the practice of former times.

‘ 3. Because it is inherent in every court of judica-
‘ ture, to assert and preserve the former rules of pro-
‘ ceedings before them, which therefore must be steady
‘ and certain, especially in this High Court ; that the
‘ subject and all persons concerned may know how to
‘ apply themselves for justice. The very Chancery,
‘ King’s Bench, &c. have their settled rules and stand-
‘ ing orders, from which there is no variation.

Anglesey

Clare

Stamford.

Die Sabbati, 5^o die Aprilis, 1690.

Ordered, That on Wednesday next this House will take into consideration, 'Whether impeachments continue from Parliament to Parliament ?'

Die Luna, 6^o die Octobris, 1690.

Lords Committees appointed by the House to inspect and consider precedents, whether impeachments continue in *statu quo* from Parliament to Parliament; whose Lordships having considered thereof, are to report their opinions to this House.

Die Jovis, 30^o die Octobris, 1690.

The Earl of Mulgrave reported from the Lords Committees appointed to inspect and consider precedents, whether impeachments continue in *statu quo* from Parliament to Parliament, several precedents concerning impeachments, brought to the Committee by Mr. Petyt from the Tower, as followeth :

Edw. III.	' Num. 1. Roger de Mortimer	} All condemned the same Parliament.
A ^o 4.	' Num. 2. Symon de Berryford	
	' Num. 3. John Matravers	
	' Num. 4. Bogo de Bayons,	
	Jn ^o Deverall	
	' Num. 5. Tho. Gurny,	}
	Will. Ogle	

- ' Num. 16. Berkly, accused by the King,
- ' found not guilty by twelve Knights;
- ' yet, because the King was murdered
- ' by

‘ by persons under his command, was
 ‘ kept under bail till the next Parlia-
 ‘ ment, which was A° 5; then he was
 ‘ discharged from his bail; and, A° 11,
 ‘ he is adjudged innocent; wherein also
 ‘ there is some mention made of proceed-
 ‘ ings about him A° 9, of which pro-
 ‘ ceedings there is no record.

A° 15. ‘ Num. 8. 43. Archbishop of Cant. desires
 ‘ to be examined in Parliament; who is
 ‘ taken notice of again A° 17. Num. 22,
 ‘ where it is called an arraignment; but
 ‘ it is not plain that it was an impeach-
 ‘ ment, either from the King or the
 ‘ Commons.

A° 42. ‘ Num. 20. Jn° de la Lee, Steward of the
 ‘ Household.

A° 50. ‘ Num. 17. Rich. Lyons, merchant of Lon-
 ‘ don, impeached by the Commons,
 ‘ judged to prison till he paid a fine to
 ‘ the King.
 ‘ On further enquiry, it was found, that
 ‘ he was awarded to prison at the will
 ‘ of the King, and put to fine and ran-
 ‘ som according to the horribility of his
 ‘ offence, and to lose his franchise of the
 ‘ city of London.

A° 51. ‘ Memb. 27. Rot. Par. Afterwards he was
 ‘ pardoned in part by the Jubilee Par-
 ‘ don;

‘ don; but pardoned fully by a particu-
 ‘ lar pardon, for the procuring of which,
 ‘ Alice Pierce is accused in the first year
 ‘ of Rich. the Second.

- A° 50. ‘ Num. 21. Lord Latimer, impeached by
 ‘ the Commons, had then judgment
 ‘ given on him; but not expressed what.
 ‘ Num. 31. 33. 34. William Ellis, Jn°
 ‘ Peachy, Lord Nevill, impeached by
 ‘ the Commons.
 ‘ Numb. 47. Adam de Bury impeached.

- A° 51. ‘ Num. 91. The Commons desired he might
 ‘ be pardoned; and he had a particular
 ‘ pardon under the Great Seal.
 ‘ John Lester’s was the same case.
 ‘ Num. 87. 89. 90. 92. Alice Pierce, Jn°
 ‘ de Lester, Walter Spurrier, were all
 ‘ condemned.

- A° 50. ‘ Num. 95. 96. Hugh Farstuffs was ac-
 ‘ cused and acquitted, in A° 51: Rich.
 ‘ Ild Par. desired he might be restored
 ‘ to his favour, without any effect.

- A° 1. ‘ Nu. 38. William de Weston, Jn° Sier de
 ‘ Gomine, condemned.
 ‘ Nu. 41. Alice Pierce accused and ba-
 ‘ nished.

- A° 4. ‘ Num. 17. Sir Ra. Ferrers, accused by the
 ‘ King, acquitted; but put under bail
 ‘ to

to appear before the King any time
between that and the next Parliament.

- A^o 7. Par. 1. Num. 15. 23. 24. Bishop of Nor-
wich, Sir Wm. Ellefhan, Sir Tho.
Tryvet, Sir Hen. de Ferrers, Sir Wil-
liam de Farrington, Rob't Fits Ralph
Esquire, arraigned by the Commons,
and condemned.
- Pars 2d. Nu. 11. Mich. De la Pool ac-
cused of bribery by Jn^o Cavendish, and
acquitted.

A^o 10. Nu. 6. Accused by the Commons, con-
demned to be fined and imprisoned at
the will of the King.

Pars 1^a. Lords Appellants accused sever-
al Lords and Commoners, whom the
Commons it seems themselves had a
mind to impeach; which therefore
they represent to the Lords, that pro-
ceedings might be stayed, who not-
withstanding proceeded still in their
own way.

The Commons then impeach Sir Rob't
Belknap Lord Chief Justice, Sir Jn^o
Cary Chief Baron, and other Judges,
who were condemned the same Parlia-
ment.

Memb. 10. Sir Symon De Burly, Sir
Jn^o Beauchamp, Sir Jn^o Salisbury, Sir
James Barners, impeached by the Com-
mons, and adjudged.

A^o 21.

A^o 21. Placita } Rot. Par. Duke of Gloucester, Earl
 Coronæ. } of Arundell and Warwicke, ap-
 pealed by the Earl of Rutland, be-
 fore the King at Nottingham, and
 the proceedings brought into Par-
 liament.

Nu. 15. 19. Thomas Arundell, Archbishop of Cant.,
 Sir Tho. De Mostimer, accused by
 the Commons.

Hen. VI. Nu. 14. De la Pool Duke of Suffolke
 A^o 28. desired to have his fame vindicated in
 open Parliament, then impeached by
 the Commons, but not committed by
 the Lords, because it was a general
 accusation. At last there came a special
 accusation, upon which he was com-
 mitted by the Lords, and banished by
 the King; against which proceeding
 and banishment all the Lords, Spiritual
 and Temporal, protested.

The Committee sent for the Clerk of the Rolls,
 in order to find more precedents; the records in the
 Tower reaching no further, the Clerk accordingly
 attended, but said there was nothing registered there
 besides Acts of Parliament.

Then the Committee examined the Journals of
 the House, which reach from the 12th of Hen. VII.
 and all the precedents of impeachments since that
 time are in a list now in the Clerk's hands; among
 all

* all which, none are found to continue from one
 * Parliament to another, except the Lords who were
 * lately so long in the Tower.

* The proceedings against the Lord Stafford were
 * as follows:

De post. 5. CHARLES the II.
 A^o 1678, Dec. 5. * Impeached by the Commons.
 Dec. 28. * Examined.

In the next Parl. { * April 9. Heard his accusation read,
 1679. { * April 26. Put his answer in.

In another Parl. { * Nov. 12. His trial appointed.
 1680. { * Dec. 7. Condemned.

* The Committee also, in obedience to the House,
 * sent for the late proceedings in the King's Bench in
 * cases of impeachments, which are ready to be laid
 * before the House, as well as all the extracts out of
 * the records produced by Mr. Petyt.

* Then Mr. Petyt's Clerk, who attended by order,
 * being called in, read the precedents following:

* Rot. Par. 4 E. III. N. 16. Thomas de Berkeley's
 * case.

* Rot. Par. 15 E. III. N. 8. The Archbishop of
 * Cant: case.

* And Rot. Claus. 15 E. III. P. 3. M. 25. Darf.
 * prohibitio pro Rege.

After the consideration of which precedents, &c. &c.
 (as in the two last pages of this Appendix.)

Dis

Die Mercurii, 22^o Maii, 1717.

Ordered, That all the Lords be a Committee to search for and report precedents.

Ordered, That it be an instruction to the said Committee, in the first place, to search for and report such precedents as relate to the continuance of impeachments from session to session, or from Parliament to Parliament.

Die Sabbati, 25^o Maii, 1717.

The Lord Trevor (according to order) reported from the Committee, appointed to search and report such precedents, as may the better enable this House to judge what may be proper to be done, on occasion of the petition of the Earl of Oxford, and the case of the said Earl, as it now stands before this House,
 ' That, pursuant to the instruction given them, in the
 ' first place, to search for and report such precedents
 ' as relate to the continuance of impeachments from
 ' session to session, or from Parliament to Parliament,
 ' they had searched several precedents; and find,

' That, on the 6th of December 1660, an impeachment against William Drake, citizen and merchant
 ' of London, was brought from the Commons, and
 ' read; charging him with printing a seditious pamphlet: and he was ordered to be apprehended as a
 ' delinquent.

' 12th December 1660, he was brought to the bar;
 ' and confessed he wrote the book mentioned in the
 ' articles.

‘ 19th December, the said impeachment considered;
‘ it was ordered and declared, That, if this Parlia-
‘ ment be dissolved before this House have time to give
‘ judgment, the Attorney General should proceed
‘ against him at Law, upon the said offence.

‘ 3d Jan’y 1666, articles of impeachment, of high
‘ crimes, &c. were delivered, at a conference, against
‘ the Lord Viscount Mordaunt.

‘ 10th Jan’y, he was ordered to put in his answer.

‘ 17th Jan’y, he accordingly presented it.

‘ 7th Feb’y, a conference and free conference were
‘ had, concerning this impeachment.

‘ 8th Feb’y 1666, the Parliament was prorogued;
‘ and no further proceeding on that impeachment
‘ after the prorogation.

‘ 24th April 1668, articles of impeachment, for high
‘ crimes, &c. against Sir William Penn, were delivered
‘ by the Commons, at a conference.

‘ 27th April, he was ordered to answer.

‘ 29th April, he delivered his answer, at the bar;
‘ and a copy of it was sent to the Commons.

‘ After two adjournments, by His Majesty’s desire;
‘ the Parliament was, on the first of March 1668, pro-
‘ rogued, by commission, to the 19th of October fol-
‘ lowing;

following; and no more proceedings were had concerning the said impeachment.

5th Dec'r 1678, Lord Arundell of Wardour, Earl of Powys, Lord Bellasis, Lord Petre, and Lord Viscount Stafford, were impeached of high treason, &c.

23d Dec'r, Earl of Danby was impeached of high treason; and articles were brought up.

27th Dec'r, he was ordered to answer.

The Parliament was dissolved by proclamation, dated 24th of January 1678.

6th March 1678, a new Parliament met.

13th of the same month, the Parliament was prorogued to the 15th of that month.

17th of March, the House, considering whether the last prorogation made a session, were of opinion, That it was a session in relation to the acts of judicature, but not as to the determining laws determinable upon the end of a session. And the same day it was referred to the Committee for Privileges to consider, Whether petitions of appeal, presented last Parliament, be still in force to be proceeded on; and also to consider of the state of the impeachments brought up from the Commons last Parliament, and all the incidents relating thereto.

18th

‘ 18th March, report was made from the said Committee for Privileges, That, upon perusal of the Journal of the 29th of March 1673, they were of opinion, That, in all cases of appeals and writs of error, they continue and were to be proceeded on *in statu quo*, as they stood, at the dissolution of the last Parliament, without beginning *de novo*; and also were of opinion, That the dissolution of the last Parliament did not alter the state of the impeachments brought up by the Commons in that Parliament.

‘ 19th March, that report was considered; and, upon the question, was agreed to.

‘ 20th of March 1678, the Earl of Danby was ordered to answer; and divers further proceedings were had upon the said impeachments, in that and subsequent Parliaments.

‘ 12th Nov’r 1680, the Commons, by message, acquainted the Lords with their resolution to proceed to the trial of the Lords in the Tower, and forthwith to begin with Viscount Stafford; and to desire a day for his trial.

‘ Whereupon his trial was appointed on the 30th instant.

‘ 30th of the same Nov’r, his Lordship’s trial began in Westm’r Hall.

4th Dec'r following, the Lord High Steward gave the House an account, That, after Viscount Stafford had summed up his evidence, and the Managers had replied, his Lordship propounded several points in law, arising out of the matter of fact, to which he desired to be heard by his counsel; one of which points was,

Whether proceedings ought to be continued from Parliament to Parliament upon impeachments?

To which the House, upon consideration, refused to hear his counsel.

7th Dec'r, judgment upon him was pronounced, as usual in cases of high treason.

21st of the same month, Mr. Seymour was impeached of high crimes, &c.; and articles were brought up, and read; and he was ordered to answer.

23d of the same December, he put in his answer; and the same was read, while he was at the bar; and a copy of it to be sent to the Commons.

3d Jan'y following, which was the next day the House sat, he petitioned for a speedy trial. And a message was sent to the Commons, to give them notice of it; their Lordships finding no issue joined by replication. And counsel were assigned him.

8th Jan'y, his trial was ordered to be on the 15th of the same January; and a message was sent to the Commons,

‘ Commons, to acquaint them with it, that they might
‘ reply if they thought fit. No further proceeding
‘ was had on that impeachment.

‘ 7th of the same January, Sir William Scroggs
‘ was impeached of high treason; and articles of im-
‘ peachment were brought up. He was bailed, and
‘ ordered to answer the 14th of the same month.

‘ The said 7th of January, the Earl of Tyrone was
‘ impeached of high treason.

‘ 10th of Jan’y 1680, the Parliament was pro-
‘ rogued; and dissolved by proclamation the 18th of
‘ that month.

‘ 21st March 1680, a new Parliament met.

‘ 24th of the same March, Earl of Danby petitioned
‘ to be bailed: and the same day Sir William Scroggs
‘ answer was read; as also his petition, desiring a
‘ short day for the Commons to reply; copies of
‘ which answer and petition were sent to the Com-
‘ mons.

‘ No further proceedings were had against Sir Wil-
‘ liam Scroggs.

‘ 26th March 1681, message from the Commons,
‘ That they, having formerly demanded judgment
‘ against the Earl of Danby, desire now a day may be
‘ appointed to give it.

‘ The

* The said message was ordered to be considered on
* Monday next.

* 28th of the same month, the Parliament was dissolved.

* 19th May 1685, the House was acquainted, That
* the Lords committed to the Tower upon impeachment
* had entered into recognizances, in the King's
* Bench, to appear the first day of next Parliament;
* which was that day. Accordingly they were called
* to the bar, and their appearances recorded; and
* they petitioned for relief.

* 22d May 1685, upon consideration of the cases of
* the Earl of Powys, Lord Arundell, Lord Bellasis,
* and Earl of Danby, contained in their petitions, it
* was resolved, upon the question, That the order of
* the 19th of March 167³, should be annulled and reversed
* as to impeachments.

* 25th May 1685, an order made, for the Attorney
* General to have recourse to the indictments against
* the Earl of Powys, Lord Arundell, and Lord Bellasis,
* in order to the entering a *noli prosequi* thereon,
* according to His Majesty's warrant; and it was further
* ordered, that their bail should be discharged.

* 1st June 1685, upon motion on behalf of several
* Peers, who were bail for the appearance of the Earl
* of Powys, Earl of Danby, Lord Arundell, Lord
* Bellasis, and Earl of Tyrone in the Kingdom of
* Ireland,

‘ Ireland, the first day of this Parliament, whose recognizances were entered into in the King’s Bench; it was ordered, That the said Lords, as also all persons, Peers or others, that were bailed for their appearance, should be discharged.

‘ 26th October 1688, the Earl of Salisbury and Earl of Peterbarow were impeached of high treason, in departing from their allegiance, and being reconciled to the Church of Rome, by message from the Commons. And the Earl of Peterbarow being, by the Black Rod, brought to the bar, was ordered to be committed to the Tower; and the Earl of Salisbury to be brought to the bar, by the Chief Governor of the Tower, on Monday.

‘ 28th October, the Earl of Salisbury accordingly was brought to the bar; and the said Governor of the Tower was ordered to take him into his custody.

‘ 27th Jan’y following, the Parliament was prorogued; and dissolved by proclamation the 6th of February following.

‘ A new Parliament met, 20th of March 1689.

‘ 5th April 1690, an order was made, to take into consideration, whether impeachments continue from Parliament to Parliament, on the Wednesday following.

‘ 8th and 10th of the same month, consideration of that matter was adjourned,

‘ 7th

7th July 1690, the Parliament was prorogued.

2d October 1690, the Earl of Peterborow petitioned to be discharged, having been kept prisoner in the Tower for almost two years, notwithstanding a dissolution and several prorogations had intervened, as also an act of free and general pardon: whereupon the Judges were ordered to attend, to give their opinions, whether he be pardoned by that act. The Judges were also ordered to give their opinions, on the same matter, upon the Earl of Salisbury's petition, praying likewise to be discharged.

6th of the same month, the Judges, according to order, delivered their opinions, as follow; viz. That, if the said Earls crimes and offences were committed before the 13th of February 1688, and not in Ireland, nor beyond the seas, they were pardoned by the said act; and it was resolved, that the said Earls should be admitted to bail. And a Committee was appointed to inspect and consider precedents, whether impeachments continue *in statu quo* from Parliament to Parliament.

7th October, the said Earls were both bailed at the bar.

30th of the same October, report was made from the Committee, appointed the 6th of the same October, of several precedents brought to their Lordships by Mr. Petyt from the Tower; and also that they

‘ had examined the Journals of this House, which
‘ reach from the 12th of Henry the VIIIth; and all
‘ the precedents of impeachments since that time were
‘ in a list now in the Clerk’s hands; among all which,
‘ none are found to continue from one Parliament to
‘ another, except the Lords who were lately so long
‘ in the Tower.

‘ After consideration of which report, and reading
‘ the orders made the 19th of March 167th, and the
‘ 22d of May 1685, concerning impeachments; and
‘ long debate thereupon; it was resolved, That the
‘ Earl of Salisbury and Earl of Peterborow should be
‘ discharged from their bail; and accordingly they and
‘ their sureties were ordered to be discharged from
‘ their said recognizances.

‘ A list has been produced before the Committee,
‘ which to them seems to be the list referred to in the
‘ said report; which is ready to be produced, if the
‘ House shall think the same necessary.

‘ 12th Nov’r 1690, upon motion, ‘ That a day be
‘ appointed, for the explanation of the votes of the
‘ 30th of October last;’ it was ordered to take the
‘ same into consideration on the 18th of the same No-
‘ vember, and all the Lords to be summoned; on
‘ which day the House sat: but it doth not appear by
‘ the Journal that any thing was done in pursuance of
‘ that order.

‘ 27th April 1695, the Duke of Leeds was im-
‘ peached of high crimes and misdemeanors; and arti-
‘ cles

articles were on the 29th of the same month exhibited against him. He put in his answer the next day; and a copy of it was sent to the Commons.

1st May following, a message was sent to the Commons, to put them in mind of the said impeachment; the Lords conceiving the session could not continue much longer.

3d of the same May, the Parliament was prorogued; and dissolved by proclamation, dated the 11th of October 1695.

24th of June 1701, the House of Commons having impeached the Duke of Leeds on the 27th of April 1695; and on the 29th of the same month exhibited articles against him, to which he answered; but the Commons not prosecuting, the said impeachment and articles were ordered to be dismissed.

17th May 1698, Peter Longueville was, amongst others, impeached of high crimes, &c.; and articles were brought up.

27th of the same May, he put in his answer, and pleaded Not Guilty.

28th June, the trial of Goudet and others, upon the impeachments against them, was appointed on the 4th of July next.

The same day, the said Goudet, Barrau, Seignoret, Baudowin, Santiny, Diharce, and Pearse, relinquished

quished their pleas, and pleaded Guilty; and the Black Rod ordered to take them into custody.

30th June, Dumaistre put in his answer, and pleaded Guilty; and the Black Rod ordered to take him into custody.

4th July 1698, judgment was pronounced against the eight persons above mentioned; and no further proceedings concerning Longueville.

The next day the Parliament was prorogued; and dissolved by proclamation, dated the 7th of July 1698.

The Committee have also inquired of precedents of indictments against Peers, which have been removed into the House of Lords by *Certiorari*; and the proceedings thereupon; and find, that, on the 19th of March 1677, the proceedings against the Earl of Pembroke, upon an indictment, for the death of Nathaniel Cony, had before the commissioners of Oyer and Terminer at Hicks' Hall, upon which his Lordship was found guilty of felony and murder, was brought into this House, in order to his trial.

4th April 1678, the said Earl was tried, and found guilty of manslaughter.

15th July following the Parliament was prorogued.

11th Nov'r 1685, the Lord Mayor and the rest of the Justices of Oyer and Terminer and General

Gaol

‘ Gaol Delivery for London and Middlesex were ordered to return, by virtue of His Majesty’s writ of
‘ *Certiorari*, the indictment of high treason, found
‘ before them, against the Earl of Stamford, then
‘ prisoner in the Tower.

‘ 14th Nov’r, the indictment was delivered.

‘ 16th Nov’r, the said Earl was ordered to be
‘ brought to the bar.

‘ 17th Nov’r, his Lordship was brought accordingly,
‘ ly, examined, and his trial appointed on the 1st of
‘ December following; and an address to His Majesty,
‘ That a place be prepared in Westminster Hall for
‘ his trial.

‘ 18th Nov’r, the King’s answer was reported,
‘ That He had given order accordingly.

‘ 20th Nov’r 1685, the Parliament was prorogued;
‘ and, after several prorogations, was dissolved the
‘ 20 of July 1687.

‘ And there doth not appear any further proceeding
‘ on the said indictment.

‘ 4th Jan’y 1692, the Coroner’s Inquest was brought
‘ in, concerning the death and murder of William
‘ Mountfort, wherein the Lord Mohun was found
‘ to be aiding and assisting.

‘ 4th Feb’y following, his Lordship was tried; and
‘ found Not Guilty, and discharged.

‘ 14th

* 14th March following, the Parliament was pro-
* rogued.

* 13th Dec'r 1697, a writ of *Certiorari* was ordered,
* for removing the indictment found against the Lord
* Mohun, concerning the death of William Hill.

* 10th Jan'y 1697, resolved to proceed to his trial.

* 4th July 1698, the Clerk of the Crown read the
* indictment to his Lordship; and he pleaded His
* Majesty's pardon: which was allowed by the House;
* and he was discharged.

* 13th March 1698, an indictment against the Earl
* of Warwick, for the murder of Coote, was brought
* by *Certiorari*.

* 25th March 1699, Lord Mohun allowed a copy
* of his indictment.

* 28th March, the Earl of Warwick was tried, and
* found guilty of manslaughter.

* 29th of the same month, the Lord Mohun was
* tried, and found Not Guilty.

* 4th May 1699, the Parliament was prorogued.

Which report being read by the Clerk:

It was proposed, 'To resolve, That the impeach-
* ment of the Commons against the Earl of Oxford
* is determined by the intervening prorogation.'

* And,

And, after debate thereupon ;

The question was put, ' That it is the opinion
' of this House, that the impeachment exhibi-
' bited by the Commons of Great Britain,
' against Robert Earl of Oxford and Earl Mor-
' timer, for high treason and other high crimes
' and misdemeanors, is determined by the in-
' tervening prorogation ?'

It was resolved in the negative.

Dissentient.

' 1. Because there seems to be no difference in law
' between a prorogation and a dissolution of a Parlia-
' ment, which, in constant practice, have had the
' same effect, as to determination both of judicial and
' legislative proceedings ; and consequently this vote
' may tend to weaken the resolution of this House,
' May the 22d, 1685, which was founded upon the
' law and practice of Parliament in all ages, without
' one precedent to the contrary ; except in the cases
' which happened after the order made the 19th of
' March 1678, which was reversed and annulled in
' 1685 ; and in pursuance hereof the Earl of Salisbury
' was discharged in 1690.

' 2. Because this can never be extended to any but
' Peers ; for, by the statute 4^o Ed. III^o, no Commoner
' can be impeached for any capital crime : and it is
' hard to conceive why the Peers should be distin-
' guished, and deprived of the benefit of all the laws
' of liberty to which the meanest Commoner in Britain

' is entitled ; and this seems the more extraordinary,
' because it is done unasked by the Commons, who,
' as it is conceived, never can ask it with any colour
' of law, precedent, reason, or justice.

' NOTTINGHAM,

' ARINGDON.

' FR. ROFFEN.

' NORTH & GREY,

' BRUCE.

' DARTMOUTH.

' BATHURST,

' GUILFORD,

' MANSEL. HAY.

' FOLEY.

Addenda to Page xviii. of this Appendix

After the consideration of which precedents, and others mentioned in the debate, and reading the orders made nineteenth of March, 167²/₅, and two and twentieth of May, one thousand six hundred eighty-five, concerning impeachments; and after long debate thereupon, and several things moved;

This question was proposed,

‘ Whether James Earl of Sarum and Henry Earl of Peterborough shall be now discharged from their bail?’

Then this previous question was put, ‘ Whether this question shall be now put?’

It was resolved in the affirmative.

Then the main question was put, ‘ Whether James Earl of Salisbury and Henry Earl of Peterborough shall be now discharged from their bail?’

It was resolved in the affirmative.

‘ Leave having been given to any Lords, to enter their dissents, if the question was carried in the affirmative;

‘ And these Lords following do enter their dissents, in these reasons:

‘ I Be-

